

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DONNA CURLING, *et al.*

Plaintiffs,

v.

BRAD RAFFENSPERGER, *et al.*,

Defendants.

CIVIL ACTION
NO. 1:17-CV-2989-AT

**STATE DEFENDANTS' RESPONSE TO PLAINTIFF RICARDO
DAVIS'S MOTION TO WITHDRAW AND SUBSTITUTE COUNSEL**

Per the Court's November 29, 2023 docket-entry order, State Defendants hereby respond to Plaintiff Ricardo Davis's Motion to Withdraw and Substitute Counsel, ECF 1718, stating as follows:

1. On November 29, 2023, Davis filed his "Unopposed" Motion to Withdraw and Substitute Counsel. Specifically, Davis informed the Court that he had retained the services of Todd A. Harding of Harding Law Firm, LLC to represent him in this matter and that his prior counsel, Cary Ichter, wished to withdraw from representing Davis.

2. Notably, Mr. Ichter does not seek to withdraw from the *case*, but simply from representing Davis. Mr. Ichter will still be counsel of record for

the other three individual Coalition plaintiffs: Megan Missett, William Digges, and Laura Digges.

3. Approximately 15 minutes later, the Court granted Davis's motion.

4. That same day, counsel for Plaintiffs Donna Curling, Donna Price, and Jeffrey Schoenberg ("Curling Plaintiffs") emailed the Court, requesting that the Court vacate its order from earlier in the day so that Curling Plaintiffs could note their opposition to Davis's motion. *See Exhibit 1* (Nov. 29, 2023 Email from D. Cross to Court).

5. The Court promptly did so and requested that the other parties submit their views on Plaintiff Davis's motion by 10:00 a.m. on December 4, 2023.

6. Local Rule 83.1(D) provides Davis's new counsel, Mr. Harding, the right to appear on his behalf simply by filing a Notice of Appearance with the Court, notwithstanding any other rights Davis might have to the counsel of his choice. State Defendants are unaware of any legal basis to prevent Mr. Davis from selecting Mr. Harding to represent him in this matter.

7. Thus, the only issue presented by the motion is whether Mr. Ichter may withdraw from representing Davis. Mr. Ichter's involvement

in the case has been limited, but State Defendants nonetheless take no position on the issue of Mr. Ichter's withdrawal.¹

8. However, State Defendants write to emphasize the necessity of making a decision on this question quickly. In particular, a decision needs to be made before the entry of the pretrial order.

9. State Defendants also strenuously object to Curling Plaintiffs' suggestion that Mr. Harding's addition to Plaintiffs' litigation team presents any reason to sever the case. *See* Ex. 1 at 1–2. Mr. Davis's motion does not request or otherwise mention severance, and State Defendants are unaware of the basis for Curling Plaintiffs' introduction of that concept. Regardless of its provenance, however, severing the case at this late stage—over six years into the case and only a month before trial—would impose extreme prejudice on State Defendants, who would now be exposed to two separate trials. Plaintiffs chose to divide into two separate groups over differences in case strategy long ago and are presently proceeding on two distinct complaints. Nevertheless, Plaintiffs have chosen to try this case together. If Plaintiffs have disagreements as to strategy at trial—disagreements which are purely hypothetical at this point—that's Plaintiffs' problem, not State Defendants'.

¹ The Coalition for Good Governance jointly filed its response to Plaintiff Davis's motion with Megan Missett, William Digges, and Laura Digges, which Mr. Ichter signed as counsel for those individual plaintiffs. ECF 1719.

10. This Court cannot permit any apparent discord in Plaintiffs' camp as they wrestle with the consequences of their chosen legal and public-relations strategies to prejudice State Defendants' ability to defend themselves on the eve of trial.

Respectfully submitted, this 4th day of December, 2023.

/s/ Vincent R. Russo

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LOCAL RULE 7.1(D) CERTIFICATION

I certify that this State Defendants' Response to Plaintiff Ricardo Davis's Motion to Withdraw and Substitute Counsel has been prepared with one of the typeface and point selections approved by the Court in Local Rule 5.1. Specifically, this document has been prepared using 13-pt Century Schoolbook font and type.

/s/ Vincent R. Russo
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